

Richard J. Klein III 350-022  
R.C.I. P.O. Box 7010  
Chillicothe, Ohio 45601

July 22, 2005

CLERK OF COURT  
UNITED STATES DISTRICT COURT  
100 EAST FIFTH STREET, ROOM #324  
CINCINNATI, OHIO 45202

Re: Klein v. Carter, Case No. 1:01-cv-794

Dear Clerk,

Enclosed please find the second "Affidavit Pursuant to 28 U.S.C. 1915(a)(1)" the previous was unlawfully voided by prison authorities by stamping with red ink because these individuals are attempting to abridge and impair my ability to appeal to the United States Court of Appeals, but I have secured a second affidavit and prison authorities have refused to provide my with the requisite processes to file.

Second, I have not included the \$30.00 check mentioned in the enclosed affidavit because I have requested that the prison authorities make a check for \$30.00 for partial filing fee, but they said they will do it when they get around to it. Enclosed is a sworn declaration verifying that I have, in fact, attempted to obtain the check for this mailing. This demonstrates that I am being unavoidably prevented from obtaining processes necessary to secure this appeal. Therefore, the \$30.00 I requested to be set by prison authorities from my account here may not arrive on time or at all. Please inform me whether or not this check arrives.

Third, my father said that he "might" (maybe) come to the Clerk's office to pay the filing fee in my behalf because I am indigent, but this is not an absolute. If this has not occurred, please file the enclosed affidavit. Thank you.

Sincerely,  
  
Richard J. Klein III

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

FILED  
JAMES BONINI  
CLERK  
05 JUL 28 AM 11:42  
U.S. DISTRICT COURT  
SOUTHERN DIST OHIO  
WEST DIV CINCINNATI

RICHARD J. KLEIN III,  
Petitioner/Appellant,

vs.

Case No. 1:01-cv-794

HAROLD CARTER, WARDEN,  
Respondent/Appellee.

AFFIDAVIT PURSUANT TO 28 U.S.C. 1915(a)(1)

(1) I, Richard J. Klein III 350-0022, being duly cautioned and sworn deposes and states the following:

(2) I, Richard J. Klein III 350-022, declare that I am Petitioner/Appellant in this appeal from Habeas Corpus action pursuant to 28 U.S.C. 2254, judgment entered June 27, 2005, by United States District Court Judge Beckwith (Doc. 82-83 attached). I am incarcerated at Ross Correctional Institution (R.C.I.). I declare that I am unable to prepay the full filing fee or costs under 28 U.S.C. 1915, I declare that I am unable to prepay the full filing fee or the costs of these proceedings and that I am entitled to the relief sought in the appeal of the decision of the habeas corpus petition.

(3) I have a work assignment where I receive \$17.00 per month. In the past (6) months I have received loans for the purpose of purchasing legal materials, (Books, case law copies, typing paper, carbon paper, typewriter ribbon, envelopes, pens and pencils, copies of documents for filing and postage and other necessities for drafting and submitting documents for filings) and I also have other actions pending at this time that require purchasing and use of these materials. I receive no money from any other source. The source of these deposits in this account are loans that I borrow for this purpose which range from \$5.00 to \$125.00.

(4) I do not have any accounts of any kind other than the trust account at R.C.I., and I do not possess certificates of deposit or savings bonds.

(5) I am without assets, including real property, stocks, bonds, securities, or any other financial instruments, automobiles, or anything of

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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WEST DIV CINCINNATI

RICHARD J. KLEIN III,  
Petitioner/Appellant,

vs.

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HAROLD CARTER, WARDEN,  
Respondent/Appellee.

SECOND MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL AND COA

On June 27, 2005, the United States District Court entered judgment in this habeas corpus action. (Doc. 82-83). On June 28, Appellant formally in writing sent request to the cashier to prepare an "account statement" pursuant to 28 U.S.C. 1915(a)(2), but the authorities have failed to provide this document for the filing of Petitioner's notice of appeal and certificate of appealability. Therefore, Petitioner is being unavoidably prevented from timely adequate filing because Petitioner does not possess the necessary funds on account to pre-pay the filing fee in its entirety. Payment will have to be taken directly from Petitioner's account in order to comply with the filing requirements. All that Petitioner was permitted to obtain was a notary for the affidavit pursuant to 28 U.S.C. 1915(a)(1) and the "certificate" anything else is unavailable to Petitioner at this time; therefore, Petitioner is being unavoidably prevented from pursuing this action by the prison's failure to provide the requisite account statement. (See affidavits attached).

For the foregoing reasons, Petitioner requests an additional (30) days to file notice of appeal and COA.

Respectfully submitted,



Richard J. Klein III 350-022

Petitioner/pros se

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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Richard J. Klein,  
Petitioner

vs.

Case No. 1:01cv794  
(Beckwith, J.; Black, M.J.)

Harold Carter,  
Respondent

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ORDER

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On May 20, 2005, the Magistrate Judge recommended that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. (Doc. 80). The District Court subsequently adopted the Report and Recommendation, declining to issue a certificate of appealability and denying *in forma pauperis* status for appeal purposes. (Doc. 82). On July 22, 2005, petitioner filed a notice of appeal with the filing fee, and a motion for a certificate of appealability. (Docs. 85, 86). This matter is before the Court on petitioner's two motions for an extension of time to file a notice of appeal and a certificate of appealability (Docs. 84, 87) and petitioner's motion for a certificate of appealability. (Doc. 85).

Because petitioner has already filed his notice of appeal and his filing fee (Doc. 86), an extension of time is unnecessary. Moreover, this Court has ordered that a certificate of appealability not issue in the present case. (*Id.*). Accordingly, petitioner's motions for an extension of time (Docs. 84, 87) and petitioner's motion for a certificate of appealability (Doc. 85) are hereby DENIED as moot.

Date: July 27, 2005  
hr

s/Sandra S. Beckwith  
Sandra S. Beckwith, Chief Judge  
United States District Court



APPEAL

**U.S. District Court  
Southern District of Ohio (Cincinnati)  
CIVIL DOCKET FOR CASE #: 1:01-cv-00794-SSB-TSB  
Internal Use Only**

Klein v. Carter  
Assigned to: Sandra S Beckwith  
Referred to: Timothy S. Black  
Demand: \$0  
Cause: 28:2254 Petition for Writ of Habeas  
Corpus (State)

Date Filed: 11/16/2001  
Jury Demand: None  
Nature of Suit: 530 Habeas  
Corpus (General)  
Jurisdiction: Federal Question

**Petitioner**

**Richard J Klein**

represented by **Richard J Klein**  
350-022  
Ross Correctional Institution  
PO Box 7010  
Chillicothe, OH 45601  
PRO SE

V.

**Respondent**

**Warden Harold Carter**

represented by **Diane Duemmel Mallory**  
Ohio Attorney General - 2  
Corrections Litigation  
150 East Gay Street  
16th Floor  
Columbus, OH 43215  
614-644-7233  
Email: [dmallory@ag.state.oh.us](mailto:dmallory@ag.state.oh.us)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*